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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,145	06/20/2000	Tsukasa Ogino	35.C14572	5116
5514	7590	02/07/2006	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			BOUTAH, ALINA A	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/597,145

Applicant(s)

OGINO, TSUKASA

Examiner

Alina N. Boutah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 17,18,25-28,30,31,42-46,48-56,76,77,84-87,89,90,97,101-105,107-115,135,136,143-146,148,149,156,160-164 and 178-183.

Continuation of Disposition of Claims: Claims rejected are 17,18,25-28,30,31,42-46,48-56,76,77,84-87,89,90,97,101-105,107-115,135,136,143-146,148,149,156,160-164 and 178-183.

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DETAILED ACTION

Response to Amendment

This action is in response to Applicant's amendment filed April 12, 2005. Claims 17, 18, 25-28, 30, 31, 42-46, 48-56, 76, 77, 84-87, 89, 90, 97, 101-105, 107-115, 135, 136, 143-146, 148, 149, 156, 160-164, and 178-183 are pending in the present application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 18, 25-28, 30, 31, 42-46, 48-56, 76, 77, 84-87, 89, 90, 97, 101-105, 107-115, 135, 136, 143-146, 148, 149, 156, 160-164, and 178-183 rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,205,477 issued to Johnson et al. (hereinafter referred to as Johnson).

(Amended) Regarding claims 17, Johnson teaches a server determination apparatus, comprising:

receiving means for receiving an inquiry from a first one of a plurality of information distribution servers (Abstract; col. 1, lines 52-55);

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collection means for collection network state information between a client and each of the plurality of information distribution servers, server determination means for determining based on the network state information, which one of the plurality of information distribution servers the client, which has accessed the first information distribution server, should access (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23); and

informing means for informing the first information distribution server of the determined one of the plurality of information distribution servers that the client should access (col. 4, line 61 to col. 55, line 19).

(Amended) Regarding claim 18, Johnson teaches the apparatus according to claim 17, further comprising logical distance obtaining means for obtaining logical distances between the client and each of the plurality of information distribution servers, wherein said determination means determines the one of the plurality of information distribution servers based on the network state information and the logical distances col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

(Amended) Regarding claim 25, Johnson teaches the apparatus according to claim 17, wherein said collection means collects at least one of a response time, a number of routers steps, and a packet loss ratio between said client each of the plurality of information distribution servers (abstract).

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(Amended) Regarding claim 26, Johnson teaches the apparatus according to claim 17, wherein said server determination means determines the one of the plurality of information distribution servers based on the network state information and state information of each of the plurality of information distribution servers (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

(Amended) Regarding claim 27, Johnson teaches the apparatus according to claim 17, wherein when the network state information is collected, said collection means collects at least one of a congestion degree, a number of packets, and a number of packet errors (col. 9, lines 23-36).

(Amended) Regarding claim 28, Johnson teaches the apparatus according to claim 26, wherein said collection means collects one of a CPU load ratio, a CPU idle value, a number of connection links, and a disk load ratio each of the plurality of information distribution servers (col. 9, lines 37-40).

Claims 30, 38, 42-46 are similar to claims 17, 18, 25-28, respectively, therefore are rejected under the same rationale.

(Amended) Regarding claim 48, Johnson teaches an information distribution system comprising:

a plurality of information distribution servers (figure 1: 14-18); and

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a network status server (figure 2: 70), at least a first one of said plurality of information distribution servers comprising:

inquiry means for inquiring of said network status server which one of the plurality of information distribution servers a client should access in response to accessing to the first information distribution server by the client (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23);

response reception means for receiving a response to said inquiry from said network status server (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23); and

indication means for indicating an information distribution server included in said response to said accessing client, and said network status server comprising:

inquiry reception means for receiving the inquiry from said inquiry means of the first information distribution server (col. 2, lines 6-14; figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23);

collection means for collecting network state information between the client and each of the plurality of information distribution servers (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23);

server determination means for determining based on the network state information which one of the plurality of information distribution the client should access (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23); and

response transmission means for returning the server determined by said server determination means to said first information distribution server having transmitted the inquiry (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

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(Amended) Regarding claim 49, Johnson teaches the information distribution system according to claim 48, further comprising: a route server, comprising: means for obtaining a logical distance between the client and each of the plurality of information distribution servers, and providing said logical distances to said network status server when said logical distance obtaining means obtains and logical distances (col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

(Amended) Regarding claim 50, Johnson teaches the information distribution system according to claim 48, wherein each of said plurality of information distribution servers further comprises: means for collecting network state information between a site to which the information distribution server belongs and said client; and network state transmission means for transmitting said collected network state information to the network status sever (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

(Amended) Regarding claim 51, Johnson teaches the information distribution system according to claim 48, wherein each of said plurality of information distribution servers comprises: means for collecting network state information of the information distribution server; and in-site information transmission means for transmitting said collected network state information in the site, and the state information of the information distribution server to the network status sever (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

Claims 52-55 are similar to claims 48-51, therefore are rejected under the same rationale.

Regarding claim 56, Johnson teaches the information distribution system according to claim 53, further comprising: site determination means for, when it is judged that the access from said client is a first access, determining an optimum site from respective sites which include the plurality of information distribution servers based on the logical distances obtained by social logical distance obtaining means; second server determination means for determining an optimum information distribution server from a plurality of information distribution servers in said optimum site determined by the site determination means based on a predetermined condition; wherein said second server determination means, when it is judged that the access from said client is not the first access, determines the optimum information distribution servers based on the logical distances obtained from said logical distance obtaining means, the network state information between said respective sites and said client, and state information in said respective sites collected by said collection means, and said response transmission means informs the server determined by said server determination means or said second server determination means as said optimum server to said first information distribution server having transmitted the inquiry (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

Claims 76-77 and 84-87 are similar to claims 17, 18, 25-28, respectively, therefore are rejected under the same rationale.

Claims 89, 90, 97 and 101-105 are similar to claims 17, 18, 25-28, respectively, therefore are rejected under the same rationale.

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Claims 107-110 are similar to claims 48-51, therefore are rejected under the same rationale.

Claims 111-115 are similar to claims 52-56, therefore are rejected under the same rationale.

Claims 135, 136 and 143-146 are similar to claims 17, 18, 25-28, respectively, therefore are rejected under the same rationale.

Claims 148, 156 and 160-164 are similar to claims 17, 18, 25-28, respectively, therefore are rejected under the same rationale.

Regarding claims 178-183, Johnson teaches each of the plurality of information distribution servers includes the first information distribution server (figure 1).

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

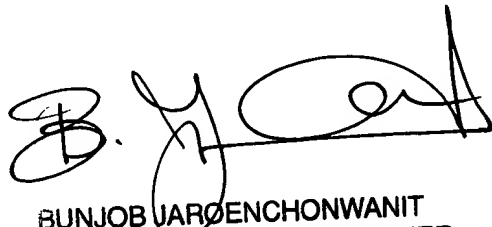
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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